

201507511
Nicole Monaco

On September 3, 2015, police officers were called to instruct homeless people to leave a publicly owned private plaza in front of a hotel. As the officers arrived, one man left the plaza for the sidewalk. Officers nevertheless arrested him for obstructing pedestrian traffic, even though they admitted they had observed no pedestrians who were obstructed by the man. He was released later the same day.

The next day, the man was at the same plaza when PO Nicole Monaco and her partner arrived with the same instructions to clear it. The man again moved from the plaza to the sidewalk, and the officers asked him to leave. He said he would not leave unless they arrested him. The officers then called an ambulance, claiming that the man was emotionally disturbed and needed psychiatric treatment, and (as shown by the hotel security footage) threw him onto the bench before arresting him.

In her CCRB interview, PO Monaco stated first that the man had sat on the bench willingly when asked. When shown the video of the incident, she stated that the man had intentionally thrown himself on the bench to make it look like she had thrown him on the bench.

Two supervisory officers were present at the scene. One, a sergeant, originally testified that the man had been forcibly taken to the bench, but offered a justification for it. The other, a captain, testified that he did not see the interaction on the bench. When shown the video, the captain testified that it showed the officers forcibly taking the man to the bench.

The CCRB found that the officers who arrested the man on the first day had done so without probable cause he was violating the law. It found that PO Monaco and her partner had improperly forcibly removed him to a hospital and had used excessive force when throwing him to the bench. It also found that PO Monaco had made a false official statement when she testified that the man sat willingly on the bench prior to being shown the video.

The NYPD gave the officers who arrested the man on the first day formalized training and did not discipline any officer, including PO Monaco for the false statement, for the actions the second day.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jaimie Vernon	Team: Squad #4	CCRB Case #: 201507511	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/03/2015 2:20 AM	Location of Incident: [REDACTED]	Precinct: 01	18 Mo. SOL 3/3/2017	EO SOL 3/3/2017	
Date/Time CV Reported Fri, 09/04/2015 10:35 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/04/2015 10:35 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Dennis Burgos	25416	§ 87(2)(b)	001 PCT
2. SGT Michael Dambrogio	03823	§ 87(2)(b)	001 PCT
3. POF Nicole Monaco	12437	§ 87(2)(b)	001 PCT
4. An officer			001 PCT
5. POM Patrick Venetek	10886	§ 87(2)(b)	001 PCT
6. CPT Mark Iocco	00000	§ 87(2)(b)	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Frank Buccheri	02715	§ 87(2)(b)	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Dennis Burgos	Abuse of Authority: On September 3, 2015, PO Dennis Burgos arrested § 87(2)(b).	A . § 87(2)(g)
B . SGT Michael Dambrogio	Abuse of Authority: On September 3, 2015, Sgt. Michael D'Ambrogio arrested § 87(2)(b).	B . § 87(2)(g)
C . SGT Michael Dambrogio	Abuse of Authority: On September 3, 2015, Sgt. Michael Dambrogio searched § 87(2)(b) phone.	C . § 87(2)(g)
D . POF Nicole Monaco	Abuse of Authority: On September 4, 2015, PO Nicole Monaco forcibly removed § 87(2)(b) to a hospital.	D . § 87(2)(g)
E . POM Patrick Venetek	Abuse of Authority: On September 4, 2015, PO Patrick Venetek forcibly removed § 87(2)(b) to a hospital.	E . § 87(2)(g)
F . POF Nicole Monaco	Force: On September 4, 2015, PO Nicole Monaco used physical force against § 87(2)(b).	F . § 87(2)(g)
G . An officer	Force: On September 4, 2015, an officer used physical force against § 87(2)(b).	G . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
I . POF Nicole Monaco	Other: There is evidence suggesting PO Nicole Monaco provided a false official statement in violation of PG 203-08.	I . § 87(2)(g)

Case Summary

On September 4th, 2015, the CCRB received the complaint of § 87(2)(b) via the Intake line. On September 16, 2015, § 87(2)(b) provided an in-person statement in which he alleged two incidents that occurred one day apart at the same location involving officers from the 1st Precinct. As a result, this report is longer because it addresses various allegations stemming from the two incident dates.

On September 3rd, 2015, at approximately 2:20AM, § 87(2)(b) who is homeless, was sleeping on the sidewalk immediately outside the pedestrian plaza of the Trump Soho New York hotel at 246 Spring Street in Manhattan (Board Review 01). The pedestrian plaza is a privately-owned public space (POP) that is made available to the public at all times. § 87(2)(b) slept along the edge of the sidewalk outside the plaza on Dominick Street, whereas a few other homeless people slept on benches inside the plaza.

Sgt. Michael D'Ambrogio and PO Dennis Burgos arrived in the plaza and asked everyone lying down on the benches to disperse. Officers of the 1st Precinct regularly go to the plaza to clear the area of homeless people. § 87(2)(b) explained to the officers that, by being on the sidewalk, he was not committing any violations, and refused to leave. He told the officers that if they wished to arrest him, they could. PO Burgos, under supervision by Sgt. D'Ambrogio, arrested § 87(2)(b) for Disorderly Conduct, for failing to obey a lawful order to disperse (**Allegations A and B**) (Board Review 02).

After § 87(2)(b) was handcuffed, Sgt. D'Ambrogio removed his phone. Sgt. D'Ambrogio allegedly searched through § 87(2)(b)'s phone before placing it in his pocket (**Allegation C**). § 87(2)(b) was then taken to the 1st Precinct stationhouse and then arraigned.

The next day, on September 4th, 2015, around 8:30AM, § 87(2)(b) had returned to the sidewalk outside the Trump hotel's pedestrian plaza and lay down in a cardboard box. PO Nicole Monaco and PO Patrick Venetek entered the plaza to ask the homeless people to disperse. § 87(2)(b) told the officers, as he did the previous day, that he had a right to stay outside the plaza. The officers continued to insist that he leave, and § 87(2)(b) asked them to arrest him if he was in violation of any rules.

However, PO Monaco and PO Venetek forcibly handcuffed § 87(2)(b) and requested an ambulance under the premise that he was emotionally disturbed (**Allegations D and E**). In the midst of the struggle, Capt. Mark Iocco of the 1st Precinct observed the officers trying to handcuff § 87(2)(b) and rushed to assist them.

After § 87(2)(b) was eventually handcuffed, the officers stood him up and began to walk him toward one of the plaza benches. However, these officers, including PO Monaco, threw him backwards onto the bench, injuring his hands (**Allegations F and G**).

After a few minutes of waiting, the ambulance arrived, and § 87(2)(b) was removed to § 87(2)(b). While at the hospital, § 87(2)(b) made his call to

the CCRB, and was released shortly thereafter. He was not arrested or summonsed in connection with the September 4th, 2015 incident.

Video Footage

Partial surveillance footage from both incident dates were retrieved from the Trump hotel and § 87(2)(b) provided a short video of his initial interaction from the September 4th, 2015 incident. The videos are located under Board Review 03, Board Review 04, and Board Review 05. The appropriate sections have been embedded in the allegation analysis of this report.

Mediation, Civil and Criminal Histories

- This case is unsuitable for mediation due to arrest without DAT and personal injury.
- After his arrest by PO Burgos, § 87(2)(b) was returned on a warrant for a previous arrest for § 87(2)(b)

- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first and only CCRB complaint.
- PO Monaco has been a member of the service for three years, and this is her first and only CCRB complaint.
- PO Burgos has been a member of the service for four years. Sgt. D'Ambrogio has served for thirteen years. PO Venetek has served for nine years. Capt. Iocco has served for nineteen years. There are no substantiated allegations against any of them. § 87(2)(g)

Potential Issues

§ 87(2)(b) identified two friends as witnesses to either incident. However, he has not provided the CCRB with their contact information despite being asked multiple times. Because they are also homeless, the CCRB has been unable to locate them.

The investigation has reached out to the Trump hotel to see if any staff witnessed the incident. It has been in contact with § 87(2)(b), the head of the Personnel Department. However, § 87(2)(b) has also been uncooperative with providing the CCRB with any information.

Findings and Recommendations

Allegations not pleaded

- § 87(4-b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- **Force** – § 87(2)(b) [REDACTED] alleged various instances of force used against him during his involuntary removal to § 87(2)(b) [REDACTED]. These allegations are subsumed within **Allegations D and E**.

Allegation A – Abuse of Authority: On September 3, 2015, PO Dennis Burgos arrested

§ 87(2)(b) [REDACTED]

Allegation B – Abuse of Authority: On September 3, 2015, Sgt. Michael D'Ambrogio arrested

§ 87(2)(b) [REDACTED]

[REDACTED] was arrested for Disorderly Conduct, subsection 6, for refusing to disperse (Board Review 02). § 87(2)(b) [REDACTED] asserted that, as he was on the sidewalk along Dominick Street, and not within the actual plaza, he was not breaking any rules by lying down on the sidewalk. Furthermore, he was on the edge of the sidewalk closer to the street, and no one was prevented from walking on the sidewalk by his presence (Board Review 01).

Sgt. D'Ambrogio and PO Burgos both explained that they were ordered to go to the Trump hotel after the hotel's staff made a complaint to the 1st Precinct about homeless people loitering in the plaza. The officers were tasked with having the homeless people disperse from the plaza. Both officers corroborated that § 87(2)(b) [REDACTED] was lying on the sidewalk outside of the plaza; however, he was still ordered to leave the plaza under threat of arrest. § 87(2)(b) [REDACTED] insisted that he had a right to remain on the sidewalk.

PO Burgos stated that § 87(2)(b) [REDACTED] was obstructing pedestrian traffic by lying on the sidewalk. However, PO Burgos made no observations that people were walking on the sidewalk during the incident or that these people were hindered in doing so by § 87(2)(b) [REDACTED]'s presence (Board Review 07). Sgt. D'Ambrogio stated that § 87(2)(b) [REDACTED] was guilty of Trespassing in or around the plaza and, by refusing to leave when the officers asked, he was also refusing to obey a lawful order (Board Review 08). Despite these violations, both officers stated that § 87(2)(b) [REDACTED] was arrested principally because he refused to leave from the plaza. Additionally, PO Burgos stated that he made the decision to arrest § 87(2)(b) [REDACTED] on his own and had not been directed to do so by Sgt. D'Ambrogio.

The Trump hotel's surveillance footage of the first incident shows § 87(2)(b) [REDACTED] entering the plaza from outside to plug his phone in one of the plaza's outlets before the officers arrive. He then leaves the plaza, showing that he was lying on the sidewalk on the side of Dominick Street. When the officers confront him, they do so at the very edge of the plaza's entrance on the Dominic Street side, further corroborating that § 87(2)(b) [REDACTED] had not been lying inside the plaza.

Under New York State penal law, a person is guilty of Disorderly Conduct, subsection 6, if they congregate with other persons in a public place and refuse a lawful order of the police to disperse (Board Review 09).

The Administrative Code of the City of New York, in the “Bias-Based Profiling” section, prohibits law enforcement officers from profiling people on the basis of their housing status and to use it as the basis of initiating law enforcement action (Board Review 10).

In *People v. Debour* (1976; 40 N.Y.2d 210; 352 N.E.2d 562; 386 N.Y.S.2d 375), the New York State Court of Appeals ruled that an officer must have probable cause that a suspect is engaging, has engaged in, or is about to engage in criminal activity before he or she can arrest the suspect (Board Review 11).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Neither PO Burgos nor Sgt. D'Ambrogio made any observation that people were attempting to walk on the sidewalk and were hindered in doing so by § 87(2)(b)'s presence. Neither officer made any observation that § 87(2)(b) had been congregating with any of the other homeless people in the plaza. Furthermore, the surveillance footage does not show § 87(2)(b) speaking or interacting with any of the other people in the plaza in a significant way prior to the officers' arrival. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Both officers stated that they had gone to the plaza to remove the homeless people after receiving a complaint from the hotel's staff, regardless of any specific violations the homeless were committing. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Allegation C – Abuse of Authority: On September 3, 2015, Sgt. Michael D'Ambrogio searched § 87(2)(b)'s phone.

It is undisputed that Sgt. D'Ambrogio removed § 87(2)(b)'s cell phone upon his arrest. § 87(2)(b) could not see what Sgt. D'Ambrogio was doing on the phone as he was standing directly opposite him, but noticed that he held the phone for several seconds and that he was “fiddling” with it. § 87(2)(b) strongly suspected that Sgt. D'Ambrogio was searching the phone for the footage § 87(2)(b) had just taken of the officers (Board Review 01).

Sgt. D'Ambrogio denied that he ever searched § 87(2)(b)'s phone. He also denied accidentally opening any of § 87(2)(b)'s media files or other private data. He explained that he removed § 87(2)(b)'s phone as a safety measure after § 87(2)(b) was placed under arrest by PO Burgos. He pointed out that § 87(2)(b)'s phone had been on and that he wanted to turn it off. He did not know if § 87(2)(b) had been trying to record the officers (Board Review 07).

Because Sgt. D'Ambrogio was unfamiliar with the make of § 87(2)(b)'s phone, he did not know immediately how to turn it off. The phone was a touchscreen, and Sgt. D'Ambrogio tried to find a button to press that would turn the phone off. He did not remember how long he held the phone in his hand. He finally found a button on the side of the phone, pressed it, and turned the phone off. Once he had done so, he placed the phone in his pocket so that PO Burgos would be able to vouch for safekeeping.

PO Burgos affirmed that Sgt. D'Ambrogio removed § 87(2)(b)'s phone as a consequence of the arrest. As he was standing with § 87(2)(b) he did not see the screen of the phone when Sgt. D'Ambrogio held it, and could not attest as to whether it was searched. Sgt. D'Ambrogio informed both PO Burgos and § 87(2)(b) that he was going to turn the phone off (Board Review 08).

The surveillance camera facing the urban plaza of the Trump hotel captured a partial view of Sgt. D'Ambrogio taking and holding § 87(2)(b)'s cell phone (Board Review 04).

Both § 87(2)(b) and PO Burgos are, for the most part, off screen, but their feet are visible at the right bottom corner. After taking the phone, Sgt. D'Ambrogio stares at the phone and holds it in both hands for at least fifteen seconds before he moves out of frame. The screen of the phone flashes briefly, but because of the low fidelity of the footage, it is unclear what Sgt. D'Ambrogio is doing on the phone, including if he ever moves his thumbs. It is also unclear what is on the phone's screen, which is only a blur.



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§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D – Abuse of Authority: On September 4, 2015, PO Nicole Monaco forcibly removed § 87(2)(b) to a hospital.

Allegation E – Abuse of Authority: On September 4, 2015, PO Patrick Venetek forcibly removed § 87(2)(b) to a hospital.

It is undisputed that, on September 4th, 2015, § 87(2)(b) was forcibly removed from the Trump Soho New York's urban plaza after being deemed an emotionally disturbed person. § 87(2)(g)

§ 87(2)(g)

It is undisputed that PO Monaco and PO Venetek entered the plaza to demand that the homeless people leave. As he had the previous day, § 87(2)(b) asserted that, as he was on the sidewalk and not within the plaza, he was committing no violation by lying near the edge of the sidewalk on Dominick Street (Board Review 01).

When the officers insisted that § 87(2)(b) leave, § 87(2)(b) told them he would only leave if arrested. However, PO Monaco and PO Venetek informed him that they did not wish to arrest or summons him, and only wanted him to leave the area. § 87(2)(b) insisted that he had a right to be where he was. PO Venetek told § 87(2)(b) he “must be crazy” if he preferred to be arrested than to simply leave, and told § 87(2)(b) that he was going to call an ambulance.

All of a sudden, PO Monaco took § 87(2)(b)'s book bag, which had been beside him, and moved it closer to herself and PO Venetek. § 87(2)(b) did not understand why PO Monaco tried to remove his bag and, as he continued to lie down on the sidewalk, he lunged toward the bag. As he grabbed his bag back, PO Monaco and PO Venetek jumped on his back and tried to handcuff him. However, § 87(2)(b) retained his grip on his bag, clutching it to his belly, and would not give up his hands. PO Monaco tried to wedge her asp in between § 87(2)(b)'s arm and his belly but could not pry open his arm. PO Venetek punched § 87(2)(b) twice in his back, but he still maintained a hold on his bag. PO Venetek took out his pepper spray and shook it, but never discharged it.

While PO Monaco and PO Venetek tried to handcuff § 87(2)(b) Capt. Mark Iocco, who was dressed in plainclothes, jumped in to assist the officers. As § 87(2)(b) lay on the ground, one of the officers rubbed his forehead in the concrete. The officers were eventually able to handcuff him. Around the same time, several backup officers arrived. § 87(2)(b) was eventually transported to Bellevue Hospital with PO Monaco.

PO Monaco and PO Venetek explained that, when they received their assignment for the day, they had been given explicit orders from their desk sergeant to go to the Trump Soho New York and have the homeless people in the urban plaza disperse (Board Review 12 and Board Review 13). They were to offer the homeless information on how to get into a shelter. Most of the people they approached voluntarily left.

The officers found § 87(2)(b) lying on the sidewalk in a cardboard box. Both officers explained that, by doing so, § 87(2)(b) was committing the dual violations of obstructing pedestrian traffic and erecting a structure. However, neither officer wished to summons or arrest him for either violation, preferring to have him leave the plaza on his own accord. However, § 87(2)(b) refused to leave the plaza and declined the services that they offered him. § 87(2)(b) was calm and told the officers that they were the nicest officers he had met.

The officers got into their vehicle and realized that § 87(2)(b) had no intention to leave, which they assumed he would based on their interaction. The officers returned to § 87(2)(b) and § 87(2)(b) explained that the only way he would leave the plaza is if the officers were to arrest him.

The officers engaged in conversation with § 87(2)(b) urging him to get up off the sidewalk and leave, but § 87(2)(b) continued to refuse. He repeated that the only way he would leave the plaza is if the officers were to arrest him. PO Venetek asked § 87(2)(b) questions designed to assess his mental state, such as who he was and if he knew who the President was, but § 87(2)(b) refused to answer, validating his suspicion that § 87(2)(b) was emotionally disturbed (Board Review 16). Neither officer made any additional observations about § 87(2)(b)'s behavior that led them to think he was emotionally disturbed, including whether § 87(2)(b) appeared to be intoxicated or under the influence of drugs. Furthermore, neither officer described § 87(2)(b) as acting in a violent manner or as posing a threat to himself or to others.

PO Monaco stated that, after § 87(2)(b) continued to insist that the officers arrest him, she spotted § 87(2)(b) eyeing his book bag. When she looked at the bag, she noticed a can opener. Fearing that § 87(2)(b) would either try to harm the officers or himself, she moved the book bag away from § 87(2)(b) as a tactical measure. Once she had done so, § 87(2)(b) “lunged” toward the book bag, spurring the officers to handcuff him for both his and their safety. Both she and PO Venetek intended by this point to have § 87(2)(b) be taken to a hospital to be given a psychiatric evaluation (Board Review 12).

PO Venetek stated that he saw a T-38 can opener on § 87(2)(b)'s belt and also suspected that § 87(2)(b) would try to harm either himself or the officers. He saw PO Monaco move the book bag away from § 87(2)(b) with her foot, but did not know at the time why she did so. It was only after § 87(2)(b) had been handcuffed that PO Monaco told him that she had seen a can opener on the bag. PO Venetek did not recall seeing a can opener on the book bag at any point during the incident (Board Review 13). PO Venetek also admitted that he took out his pepper spray but did not discharge it.

Both officers confirmed that § 87(2)(b) lunged at the book bag after PO Monaco had removed it, which forced the officers to handcuff him for their safety. However, § 87(2)(b) resisted handcuffing by keeping his hands to his book bag which he kept close to his belly. PO Monaco admitted to using her asp to try to wedge § 87(2)(b)'s arm away, but was unsuccessful (Board Review 12). PO Venetek admitted to “jabbing” § 87(2)(b) in the back in order to force him to give up his arm, but was also unsuccessful (Board Review 13).

With Capt. Iocco's assistance, the officers were able to handcuff § 87(2)(b). PO Venetek had called for EMS and for backup before the captain arrived. In his own interview, Capt. Iocco stated that police officers do not have the authority to remove people from the Trump hotel's urban plaza simply for being homeless, and that a person refusing to leave the plaza and refusing to avail themselves of homeless services offered by officers would not automatically be subject to removal from the plaza (Board Review 14).

§ 87(2)(b) had taken a short cell phone video of his initial interaction with PO Monaco and PO Venetek (Board Review 03):



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In it, PO Monaco and PO Venetek, who are not visible in the video, explain to § 87(2)(b) that he is committing a number of violations by remaining on the sidewalk, but that they do not want to summons or arrest him. PO Monaco repeatedly insists, “We don’t want to bust your chops.” § 87(2)(b) explains that the only way he will leave the plaza is if the officers arrest him. § 87(2)(b) refuses to take any homeless services, and PO Venetek explains that if he does not leave, he might face some disciplinary action. PO Venetek then tells § 87(2)(b) that he bets that § 87(2)(b) most likely does not have an ID before the video ends.

When he was given a psychiatric examination after arriving at § 87(2)(b), § 87(2)(b) was diagnosed with an unspecified episodic mood disorder after a short interview with a doctor. The medical personnel noted he was agitated after the encounter with the police, but also noted that he was calm and cooperative. § 87(2)(b) stated that he intended to file a lawsuit against the police department and had requested to be arrested rather than sent to a hospital. He was given no medication and was psychiatrically cleared for discharge shortly after the interview (Board Review 15).

As cited above, the Administrative Code of the City of New York prohibits law enforcement officers from profiling people on the basis of housing status (Board Review 10).

The NYPD Patrol Guide Procedure 216-05, “Mentally Ill or Emotionally Disturbed Persons”, provides very specific directives to officers in dealing with emotionally disturbed people. It defines an emotionally disturbed person (EDP) as “a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner in which a police officer reasonably believed is likely to result in serious injury to himself or others”. If an EDP is armed, no attempt will be made to take that person into custody without the specific direction of a supervisor unless the person poses an immediate threat to the safety of himself or herself to that of any others present. Only if an EDP is unarmed, not violent, and willing to leave voluntarily are officers permitted to take the person into custody without the direction of a supervisor (Board Review 16).

§ 87(2)(g)

However, PO Monaco and PO Venetek both explained that they had been given orders to have the homeless people in the plaza disperse. They also stated that they had no intention of summoning or arresting the homeless people in the plaza. § 87(2)(g)

In the video § 87(2)(b) took, he exhibits no obvious signs of being emotionally disturbed. He speaks to the officers calmly and appears reasonable. However, he clearly communicates to PO Monaco and PO Venetek that he will not leave the sidewalk unless he is arrested. “Otherwise”, he says, “I’m just going to sit here.” § 87(2)(g)

PO Monaco and PO Venetek both identified the video as capturing what was close to the beginning of the conversation. They both insisted that § 87(2)(b) started to scream after the officers repeatedly told him that they would not arrest him (Board Review 12 and Board Review

13). § 87(2)(g)

Neither officer claimed that § 87(2)(b) was physically dangerous, and only expressed a general worry that he could have potentially become violent toward them or to himself. Neither officer communicated that they felt that they were in any serious danger during their initial interaction with § 87(2)(b). Even when § 87(2)(b) resisted being handcuffed, he did so passively by holding his book bag tightly to his abdomen.

§ 87(2)(g)

PO Venetek spotted a small can opener on a keychain on § 87(2)(b)'s belt. He did not see § 87(2)(b) make any movements that suggested that he was going to use it. Furthermore, § 87(2)(b) was lying on the ground at the time PO Venetek spotted the can opener. PO Monaco stated that she saw the can opener affixed to § 87(2)(b)'s backpack. She noticed § 87(2)(b) looking at the can opener, but did not see him take any physical action that would suggest that he intended to use it right then and there.

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Force: On September 4, 2015, PO Nicole Monaco used physical force against

§ 87(2)(b)

§ 87(2)(b) alleged that, after he was rear-cuffed, officers walked him toward one of the plaza benches. Instead of sitting him down gently, they threw him backwards onto the bench, injuring his hands (Board Review 01). § 87(2)(b) provides several pictures of his hands that he had taken shortly after the incident (Board Review 17, Board Review 18, and Board Review 19).



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The video of the incident, excerpted above, shows PO Monaco and an unidentified male officer taking § 87(2)(b) to a bench. At 00:06, PO Monaco has her right hand on § 87(2)(b)'s left arm, and the male officer has his right hand on § 87(2)(b)'s left leg. § 87(2)(b) hits the bench on his hands and swiftly leans backward, his legs raising upward. PO Monaco and another male officer

put his feet down and pull him forward so that his behind is on the edge of the bench. § 87(2)(b) then sits up on the bench as the officers, including Sgt. Frank Buccheri and PO Patrick Carew, mill around him. Because of the placement of the plaza's camera, whatever had occurred immediately prior to § 87(2)(b)'s being placed on the bench was not captured. However, the movement of § 87(2)(b)'s feet and the officers' feet at 00:04 indicates that there was some sort of struggle, during which § 87(2)(b) lost his footing.

Both PO Monaco and PO Venetek denied that § 87(2)(b) was thrown onto a bench. PO Monaco initially stated that § 87(2)(b) had been placed onto a bench without any force being used. § 87(2)(b) then somehow fell from the bench and, as he was handcuffed, PO Monaco had to help him get him back onto the bench. However, after seeing the video of the incident, PO Monaco amended her statement and said that § 87(2)(b) intentionally flung himself down onto a bench in order to harm himself, after which she and the unidentified male officer realigned him on the bench. She charged that § 87(2)(b) wanted to injure himself and blame it on the officers (Board Review 12).

PO Venetek, § 87(2)(g) stated that § 87(2)(b) after he was handcuffed and stood up, tried to fling himself down on the ground. The officers prevented § 87(2)(b) from doing so as they were still holding him. When backup arrived, the officers walked him over to the bench to sit down. However, § 87(2)(b) ran from the officers and flung himself down onto the bench. He repeated this after seeing the video. He explained that he was behind the party of officers closest to § 87(2)(b) on the bench, and so was not captured by the camera (Board Review 13).

Capt. Iocco did not believe officers threw § 87(2)(b) on a bench and denied that any additional force was used against him after he was handcuffed. He did not see § 87(2)(b) make any sudden movements after being handcuffed or make any attempts to injure himself or the officers. He stated that § 87(2)(b) made no attempts to flee the officers and that the officers did not believe he posed a special risk for violence or flight. When shown the video, Capt. Iocco stated that it showed the officers throwing § 87(2)(b) to the bench. He did not recollect the incident in any more detail, however (Board Review 14).

Sgt. Buccheri stated that § 87(2)(b) had to be forcibly taken to a bench because PO Monaco, PO Venetek, and Capt. Iocco explained to him that they feared that § 87(2)(b) would try to harm himself (Board Review 20). He explained that, when he arrived at the scene, he found that § 87(2)(b) had been handcuffed by PO Monaco, PO Venetek, and Capt. Iocco and was standing up. The officers continued to hold onto § 87(2)(b). He saw § 87(2)(b) "rocking" back and forth, and the officers explained to him that, prior to his arrival, § 87(2)(b) had been trying to "throw himself around". Sgt. Buccheri did not see this for himself and did not see § 87(2)(b) try to fling himself when he was present. PO Monaco, PO Venetek, and Capt. Iocco decided that § 87(2)(b) should be placed onto a bench so as to control him and prevent injury to himself and the other officers. Sgt. Buccheri agreed, but took no part in the decision. § 87(2)(b) was initially walked to the bench and placed down, but when he resisted, the officers had to overcome his resistance and forcibly take him to the bench. Sgt. Buccheri confirmed this when shown the video.

The AIDED report, prepared by PO Monaco shortly after the incident, states that § 87(2)(b) screamed that he wanted to be arrested, “appeared erratic”, acted “erratically”, and “actively resisted being restrained”. It makes no note that § 87(2)(b) flung himself around or that he tried to injure himself. In the “Actions of EDP” section, the only box that was checked is “Unable to care for self”. The boxes labeled “Attempted physical harm to self” and “Attempted physical harm to others” are not checked (Board Review 21).

The NYPD Patrol Guide Procedure concerning the use of force, 203-11, states that officers must use only the minimum amount of force necessary to overcome a suspect’s resistance to arrest or an EDP’s resistance to being taken into custody (Board Review 22).

§ 87(2)(g)
[REDACTED]

Allegation G – Force: On September 4, 2015, an officer used physical force against § 87(2)(b)

As seen in the video of the second incident, a tall, bald, white male officer assists PO Monaco in taking § 87(2)(b) to the bench. As the video is of such low fidelity, the officer’s facial features cannot be made out.

PO Monaco, PO Venetek, Capt. Iocco, and Sgt. Buccheri all could not identify this officer (Board Review 12, Board Review 13, Board Review 14, and Board Review 20). The video was also shown to both Sgt. D’Ambrogio and PO Burgos, and neither could identify this officer (Board Review 07 and Board Review 08).

The Event Unit Information for the incident shows at least three units arriving at the scene in response to PO Venetek’s call for backup: Sector E, Sector G, and a sergeant’s unit (Board Review 23). Sgt. Buccheri was the sergeant who responded, and stated his operator was PO Carew. He identified PO Crew as the heavysset white male officer in the video. He identified himself as the shorter bald white male who moves closer to § 87(2)(b) after he is taken to the bench (Board Review 20).

The Roll Call corresponding to the date and tour of this incident shows that PO Smith and PO Narcisso were assigned to Sector E, and PO Schmitt and PO Welsome were assigned to Sector G (Board Review 24). However, none of these officers are likely match for the unidentified officer, as their photos show (Board Review 25, Board Review 26, Board Review 27, and Board Review 28). Furthermore, Sgt. Buccheri, when asked if any of these officers were present during the incident, stated that he did not remember seeing them there or did not know who they were.

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]

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§ 87(4-b), § 87(2)(g)

Allegation I – Other Misconduct: There is evidence suggesting PO Nicole Monaco provided a false official statement in violation of PG 203-08.

As shown in a previous section, PO Monaco contradicted herself after being shown the video of the second incident (Board Review 12). She initially stated that § 87(2)(b) had been placed on a bench to wait for the ambulance and somehow fell. PO Monaco then assisted him in getting back onto the bench. However, after seeing the video, she said that it showed § 87(2)(b) intentionally flinging himself down on the bench. She then added that § 87(2)(b) had tried to fling himself on the ground prior to flinging himself onto the bench, which she did not state prior to being shown the video. This is also in contradiction with her AIDED report, which did not indicate that § 87(2)(b) tried to injure himself (Board Review 21).

PO Venetek, interviewed about two weeks after PO Monaco, stated before seeing the video that § 87(2)(b) had first tried to fling himself down to the ground but was prevented by doing so from the officers who were holding him. § 87(2)(b) then ran backwards to the bench and flung himself down, intentionally trying to injure himself. He confirmed this after seeing the video (Board Review 13).

Capt. Iocco, when shown the video, stated that it showed PO Monaco and the unidentified male officer forcibly taking § 87(2)(b) to the bench. When asked if § 87(2)(b) had made any actions suggesting that he may have been trying to harm himself or the officers, Capt. Iocco said he had not. He did not remember § 87(2)(b) posing a greater than normal risk of safety or of flight (Board Review 14).

Sgt. Buccheri also stated that § 87(2)(b) was taken to the bench and confirmed this when shown the video. While he saw § 87(2)(b) “rocking” back and forth, he did not see § 87(2)(b) try to throw himself down or try to injure himself in any way (Board Review 20).

NYPD Patrol Guide Procedure 203-08, concerning the making of false statements, prohibits officers from intentionally making a false official statement (Board Review 29).

§ 87(2)(g)

Squad: _____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date